

The European company, perspectives after Brexit

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Abstract

The history of the companies has proven to all of us that this area may have a dynamic similar to the most energetic ones in life. The human societies have changed and developed and together with them the companies were forced to adapt themselves in order to exist and to function over the times. The creation of the European Union brought probably the biggest changes in these fields and the European countries, now member states, have adapted their judicial system in order to have a more uniform and harmonized system. The degree of this status quo, with the rich and eventful historical, cultural and political background is highly debatable and very subjective. With the desire to build a common market, to increase trade and welfare, one of the most significant challenges was the creation of an European company (known also as Societas Europaea or SE). The purpose of this paper is to analyze the evolution of the European company and to present a perspective of it after the new evolutions in EU, mainly BREXIT. Using a comparative method on the main issues that were solved or not by the creation of the European company, the article tries to show the clash of business cultures, especially British and German ones, which affected the evolution of the entire European corporate legislation. The conclusions are guided mainly by the future possible evolution of the provisions regarding the European company after one of the strongest business cultures, namely the British one, will withdraw from the continuous fight that kept the development of business forms more in the hands of the member states and less in the hands of an harmonized European structure.

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JEL Classification: K22, K33.

1. Creation of the European Company, a long struggle for a weak unified form

The history of the European Company starts many years ago, in 1897, in Italy, in the academic area as a concept of an international company with its own single statute. The proposal came from the professor Fedozzi, a theoretical concept that was placed only partially in practice after the First World War, when "Eurofima", a company dealing with the development of railways, was created by Berne Convention from 1955.²

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² Karol Linmondin, *The European Company (Societas Europaea) - A Successful Harmonisation of Corporate Governance in the European Union?*, The Bond Review, Vol. 15, Comparative Corporate Governance, 2003, p. 150.

The first steps towards an international company statute were for a long time related to the creation of specialized transnational companies which were needed for different projects, with a special law designed for them and not real provisions addressed to the market, creating a status possible to be accessed by the entrepreneurs.

Just after the Second World War, we may speak about a real preliminary work with the clear scope to create a supranational private corporate structure. First to act was the Council of Europe in 1952 who started working on a pan-European and uniform statute of a companies³, followed after the creation of the European Communities by many other proposals coming from the academics and practitioners, all ending with the French proposal for the other member states to shape a convention on European Commercial Company.

The first important trigger was represented by the founding treaties enacting the European Communities, mainly due to its connection with the creation and development of the common market and the free movement of people, goods, services and capital, with all their effects. Among these effects it has to be observed the right of establishment which is still a debatable principle in the context of the conflict between the existing national company law systems and the new European rules. From the beginning, the principles provided in the founding treaties forced a strong analysis of their impact on the main actors of the business environment. As a consequence, many questions on how the companies were to be affected by the new created platform started to be addressed.

It was the period of countless debates on how "to adopt by means of an international convention a comprehensive company law"⁴, with many scholars, as professor Pieter Sanders⁵, coming and advocating for the concept, but was not until the European Commission intervened in the process that it made an important step towards what we call today European Company. The European Commission has continuously looking for an harmonization of the business forms with the main goal to create a non-discriminatory market with economic operators using the same instruments, its agenda showing "a comprehensive concept of European corporation law"⁶. As a result, from the beginning, there was a focus on the main issues of corporate governance, as the rights and obligations of shareholders, types of

³ Andreas Kellerhals and Dirk Truten, *The Creation of the European Company*, The Tulane European and Civil Law Forum, Volume 17, 2002, p. 72.

⁴ Dominique Carreau and L. William Lee, *Doing Business in the European Internal Market: Towards a European Company Law*, Northwestern School of Law Journal of International Law&Business, 1989, p 501.

⁵ More about his speech at the Rotterdam School of Economic: Dennis Thompson, *The Creation of a European Company*, The International and Comparative Law Quarterly, Vol. 17, No. 1, Published by: Cambridge University Press on behalf of the British Institute of International and Comparative Law, January 1968, p. 183-184.

⁶ F.Werner Ebke, *Company Law and the European Union: Centralized versus Decentralized Lawmaking*, The International Lawyer Vol.31, No. 4, Winter 1997, p 961.

management, duties of managers or the involvement of employees and many of the provisions were crafted into a connection with the common market.⁷

When the European Commission presented to the Council its first draft on the European Company⁸, that was the result of some years of debate, especially between France and Germany, on how this statute should be imposed, as uniform law in each member state or a supranational one. The goal of the European Commission was not to harmonize or unify the national legislations, but "to bypass them entirely using a separate supranational form of organization"⁹. The position of the Commission was not easily accepted by some of the member states which added to the debate other matters such as: (i) the access to the new form - the Germans considering that a limitation through the legal capital was necessary, contrary to the French side which saw a model developed on the easy to form French *societe anonime*, (ii) the right of employees to participate in the boards. This latter issue is still affecting the relationships between Germany and other member states. (iii) Even after regulating the European company, Italy faced a big problem due to the fact that its own legislation imposed (except for Sicily and Sardinia) that all shares issued by a company shall be registered¹⁰ and consequently the European company could not have bearer shares.

A form of the proposal from 1970 was finalized by a group of experts led by Professor Sanders some years before¹¹ and took the form a code with 220 articles divided in 11 sections based on the variety of legal rules from different European states, a real study of comparative law, build towards a unified company law. If we analyze its provisions, the conclusion may be that most of them are still there in the present form of the law.¹²

The majority of the Sanders code's provisions were included in the Commission's Proposal and more than 30 years had to pass until the regulation of the European Company (SE – *Societas Europaea*) was able to see the light of the corporate life. A long period of strong debates on the necessity and purpose of this form of companies, which is still under question by most of the authors in the field.

⁷ Karol Linmondin, *The European Company (Societas Europaea) - A Successful Harmonisation of Corporate Governance in the European Union?*, The Bond Review, Vol. 15, Comparative Corporate Governance, 2003, p. 148.

⁸ Proposal for a Council regulation embodying a Statute for European Companies, submitted to the Council on 30 June 1970. COM (70) 600 final. Bulletin of the European Communities, Supplement 8/70.

⁹ Terence L. Blackburn, *The Societas Europea: the Evolving European Corporation Statute*, Fordham Law Review, Volume 61, No. 4, p. 697.

¹⁰ More on the first conflicts on the draft: Dennis Thompson, *The Creation of a European Company*, The International and Comparative Law Quarterly, Vol. 17, No. 1, Published by: Cambridge University Press on behalf of the British Institute of International and Comparative Law, January 1968, p. 184-185.

¹¹ The Sanders team presented its work to the Commission in 1967.

¹² For an extensive analysis of the provisions of the Sanders Code: Dennis Thompson, *op. cit.*, p. 186-191.

The legislation consisted of two acts, the Council Regulation on the Statute for a European Company¹³ and the Council Directive supplementing the Regulation on the involvement of employees.¹⁴ From the beginning, the goal of these legislative acts was: "By creating this structure, the EU facilitated the operation of companies wishing to expand their business at the community level".

The first Article of the above-mentioned Regulation states that: "*The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade must be removed, but also that the structures of production must be adapted to the Community dimension. For that purpose it is essential that companies the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganization of their business on a Community scale.*" These statements offer us a clear explanation regarding the main purpose for which the Regulation was enacted and corresponds to the exact elements clearly pointed out in the Commission's proposal 30 years ago. Looking from this perspective we are questioning why the member states failed in accepting these needs and continued in backing up their conservative views regarding the functioning of companies?

We think the answer is given by the long period the proposal needed to be discussed and accepted and by comparing the initial text, where worries about some of the national requirements, especially French and German, were raised¹⁵, with all the other forms from the proposals to come in following years, especially after the accession of the U.K. at the Communities.

With the view to identify the possible scenarios regarding the evolution of the concept of European Company after Brexit, we will review briefly how the first text proposed by the Commission, based on the Sanders team work, was to be changed by the intervention of two new legal systems in 1973. Indeed, at the beginning of European Communities, the dominant legal system among the member states was the civil law system in different forms. Later, by the accession of the new members, U.K. Ireland and Denmark, the common law and the Scandinavian law changed a little bit the legal environment and started a long debate on the initial text, especially between Germany and England.

Without presenting here all the steps in the long process of negotiating the text of what we call now Statute of European company¹⁶, we would like to mention

¹³ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

¹⁴ Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

¹⁵ Some provisions of the Sanders Code indicated choice depending on the German or French national legislation: Dennis Thompson, *The Creation of a European Company*, *op. cit.*, p. 187-189.

¹⁶ For a deeper analysis, I recommend: Karol Linmondin, *The European Company (Societas Europaea) – A Successful Harmonisation of Corporate Governance in the European Union?*, *The Bond Review*, Vol. 15, Comparative Corporate Governance, 2003, p. 149-161.

some issues that can be considered relevant for the creation of an European company and which we may interpret differently if we imagine an "after Brexit" moment.

Firstly, we consider that it is important to analyse the formation and the access to the form of European company, meaning who can found such a company and how. From the beginning, the idea was to find a suitable form, similar with the one existing in federal systems as the one in United States, that may allow either two companies from different states, so having an European supranational presence, to merge or a company with interest in another country to divide or to create a common holding or a common subsidiary.¹⁷ But, due to the fact that each member state had its own legal rules regarding the companies, it was difficult to decide which should be the types of corporate bodies permitted to create an European company. Thus, it was proposed that only legal persons and corporate structures can form an European company in only 5 ways:

- by merger, with the meaning of a fusion of one company with another one and not the "familiar Anglo-Saxon merger by takeover"¹⁸
- by forming a joint holding company
- by forming a joint subsidiary
- through the transformation from a public company into an European company
- from an existing European company forming its own subsidiary

Secondly, the issue regarding the core principles of corporate governance couldn't be kept in the final version as it was initially proposed because, from the beginning, Germany tried to impose its dual system (meaning, a management structure with a supervisory board and the employees implicated in the board decision). Other members states, especially United Kingdom opposed to this idea due its own tradition on employees rights or other basic values of their law, such the fiduciary duties of the managers which would be forced to subordinate to a different legal regime.¹⁹

The two-tier system, which in 70s became mandatory in Germany, was the image of a traditional partnership with banks that, created "a different corporate policy than simply maximising the profit as would be done for a pure financial shareholder"²⁰. The German system was rejected by the other member states, mainly England, because it was insufficient to protect the interests of the working class and it led to rivalry between the unions²¹.

The 1989 and 1991 the Commission's proposals adopted a total different approach in field of employee participation, mainly by conditioning the creation of

¹⁷ Dennis Thompson, *op. cit.*, p. 184.

¹⁸ Jonathan Rickford, *The European Company. Developing a Community Law of Corporations*, Intersentia, 2002, p. 21.

¹⁹ *Ibidem*, p. 19.

²⁰ Patrick Speeckaert, Corporate Governance in Europe, Fordham Finance Securities&Tax Law Forum, vol. 2, no. 1, 1997.

²¹ Terence L. Blackburn, *The Societas Europea: the Evolving European Corporation Statute*, Fordham Law Review, Volume 61, No. 4, 1993, p. 748.

the European company of a system of employee involvement. Thus, it is allowed to choose among three models: (i) employee representation in the board, which was to be embraced more by the Germans and those member states having similar representation of employee in the management of the companies, (ii) appointing a separate body with employees attending or (iii) finding by negotiation other forms of workers participation (a Swedish model more welcomed by those opposing to this high implication of the employees in the management of the company).²² The 1991 proposed Directive was a total change a view, mainly because it took this form, going from the direct vertical and horizontal effect of the Regulation in the hands of the members states and giving up the minimum conditions of employee participation by offering three models, one more flexible then the other.

In relation to the management system, the Commission had to change totally its view and from the imposed two-tier system, in 1970 proposed Regulation) went in 1972 to similar provisions in the proposal of the Fifth Directive²³ and, finally, in both proposals from 1989 and 1991, it went with more flexibility and acceptance (mainly under the British pressure) and left the choice in the hands of the founders of the company.

A third issue, which from the beginning raised problems and conflicts between the main powers of the Communities, was the tax regime of the new created structure. Due to the intention of the Commission to create a single legal structure, it was intended to allow the European company which performed its business in more than one jurisdiction "to treat its aggregate operations as a single taxable entity for tax loss purposes called permanent establishments"²⁴, a complex system of offsetting the losses with the profits to which the members states were not opened.²⁵

2. The evolution of the European Company, still influenced by the clash of national cultures

We think that a very important question we need to answer to is what brings new as a form of company the structure of European Company? Maybe a strong business form? Many authors feel that the result of the long debate on the creation of the European company was, in fact, a failure and the Regulation and the Directive were just the basic structure for something that was to be determined by the member

²² For a better understanding of the employee participation from the 1991 Proposed Directive: Terence L. Blackburn, *op. cit.*, p. 746-754.

²³ More on the British opposition on the adoption of the Fifth Directive: Paul L. Davies, Sara Worthington, *Principles of Modern Company Law*, 10th edition, Sweet&Maxwell, London, 2016, p. 128.

²⁴ The term „permanent establishment” was defined in the 1970 Proposed Regulation.

²⁵ for a deep analysis, see: Terence L. Blackburn, *op. cit.*, p. 755-758.

states²⁶. Other authors²⁷ preferred to see this as the "major breakthrough"²⁸ for those business having an European presence which had the choice to switch to a common management structure, a new structure with only one set of rules.²⁹

A first important feature of the European Company still creating a debate is the one related to the possibility of transferring the seat from one member state to another, helping companies to relocate without wind-up and reincorporated. Answering to a request of the developing common market, the easy switch throughout different member states was welcomed, but some provisions as the ones related to keeping the head office in the member state where headquarters is located, destroy the exact greater mobility was intended to be obtained.³⁰ Moreover, in time, raised conflicts between the secondary legislation represented by the Regulation, as Article 7 related to the head office, and Treaty's principles, as the freedom of establishment.

We believe, as many other specialists³¹, that the truth is somewhere in between as the new form solved some issues, especially those in relation to cross-border operations, but kept most of the attributes in the hands of the national states. Thus the structure of European company can be seen now more as an "chameleon, drawing its legal character largely from the law of its registration"³²

We have to accept that the rules regulating the European company are a result of a decision of the European Union to go deeper than harmonizing the national company law by creating a common corporate vehicle³³, but, by entering this area, the Union was brought outside the conferred competence and requiring the unanimity.³⁴ For this matter, with the strong opposition of some strong corporate

²⁶ Mathias M. Siems, *The Impact of the European Company (SE) on Legal Culture*, European Law Review, Vol. 30, 2005, p. 431.

²⁷ We may find among them some Romanian ones as: Cristian Gheorghe, *Drept comercial european*, CH Beck, Bucharest, 2009, p. 148.

²⁸ Maria Chetcuti Cauchi, *The Societas Europaea (European Company) as a New Corporate Vehicle - The European Company Statute, 2001*, available online: <http://www.cc-advocates.com/publications/articles/european-company-statute-1.htm> (consulted on. 1.11.2017).

²⁹ Karol Linmondin, *The European Company (Societas Europaea) – A Successful Harmonisation of Corporate Governance in the European Union?*, The Bond Review, Vol. 15, Comparative Corporate Governance, 2003, p. 147.

³⁰ Ringe, Wolf-Georg, *The European Company Statute in the Context of Freedom of Establishment*. Journal of Corporate Law Studies, Vol. 7, No. 2, October 2007; Oxford Legal Studies Research Paper No. 25/2008, p. 185.

³¹ Böckli, Peter; Davies, Paul L.; Ferran, Eilis; Ferrarini, Guido; Garrido Garcia, José M.; Hopt, Klaus J.; Pietrancosta, Alain; Pistor, Katharina; Skog, Rolf; Soltysinski, Stanislaw; Winter, Jaap W. and Wymeersch, Eddy, *The Future of European Company Law*, Columbia Law and Economics Research Paper No. 420, May 1, 2012, p. 18.

³² Jonathan Rickford, *The European Company. Developing a Community Law of Corporations*, Intersentia, 2002, p. 20.

³³ Paul L. Davies, Sara Worthington, *Principles of Modern Company Law*, 10th edition, Sweet&Maxwell, London, 2016, p. 129.

³⁴ Case C -436/03, Parliament v Council of the European Union.

cultures, as the English and German ones, the last form of European company had to get to some flexibility in which:

- the incorporation is possible only for certain type of companies in just 5 ways
- the management structure is either the one-tier or two-tier
- employee participation is a question of choice
- no tax regime is imposed on European company.

The split into a regulation governing the form of the company, including incorporation, management structure, rights of shareholders, legal capital, and a directive on the employee participation was, at the end of the day, a compromise between the hard reactions coming from the different schools of thoughts.

If we want to have a view on the aspects such debated in 30 years from the first proposal, we will notice that, in the end, we have a supranational structure, but a very adaptable one to the national jurisdictions, especially due the opposition some of the strong provisions developed in time.

For instance, let us take the form in which the European company can be created. We started with certain legal persons and corporate structures allowed to be one and we got to "European public limited liability company"³⁵ with a fixed minimum capital of 120000 euro divided into shares³⁶, so despite the SE has opened more in time, following the recommendation of the European Parliament³⁷, it remains a strict and limitative form.

Concerning the method of formation, the studies made on the evolution of European company³⁸ present that the implementation or non-implementation of the options tends towards an alignment of the legislation applicable to this structure to the local public limited-liability companies. The differences in the way EU company law forms are understood and used at national level, the uncertainties of what rules apply for the European company which result from the rudimentary EU rules and their interface with the applicable national law.

The access to the European company structure is, for the moment, limited, this type of companies not being among those who can form an European company and even for the public private companies we have a requirement of explicit transnationality in order to be able to access such structure. This latter condition functions as protectionist one in favour of the public private companies and it affects competition of different legal forms, making also more difficult for founders to shape their wanted structures.³⁹

³⁵ Article 1.1. Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

³⁶ Articles 4.2 and 1.2 Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

³⁷ Terence L. Blackburn, *op. cit.*, p. 718.

³⁸ European Commission, Study on the operation and the impacts of the Statute for a European Company (Final Report), 2009.

³⁹ Böckli, Peter; Davies, Paul L.; Ferran, Eilis; Ferrarini, Guido; Garrido Garcia, José M.; Hopt, Klaus J.; Pietrancosta, Alain; Pistor, Katharina; Skog, Rolf; Soltysinski, Stanislaw; Winter, Jaap W. and Wymeersch, Eddy, *op. cit.*, p. 19.

As a result, the success of this form can be seen, nowadays, only in some member states as Germany or Czech Republic, the latter based mainly on shelf SEs. It is said that this is the result of a reality in which only a part of the Members States, mainly the ones influenced by the German business culture, were opened from the beginning to the idea of creating an European form of company, bringing us today to question if the European company structure can get after Brexit.

Related to the requirement that the registered office and head office of an European company shall be in the same state, most of the member states have adopted different solutions: either by requiring that the head office is located in the same place as the registered office of the European company or by not allowing a company whose head office is not in EU to participate in the formation of an European company.

As a result of the above limitation stipulated by the Statute, differently regulated by each member state, most of European companies were forced to transfer their registered offices. The most frequently chosen destinations were United Kingdom, Cyprus, France and Luxembourg, mainly for tax reasons. The question to be addressed is what happens after Brexit with those who decided to switch to UK, for the moment their situation not being stipulated in any act.

Finally, the employee participation was the most difficult issue to agree on. In the latest version, the principle is that "employee involvement is to be established in every European company"⁴⁰ and the agreement on the involvement has to be achieved through negotiation between the founders and a special body representing the workers. If we look back in time, we can say that this situation is similar with the most flexible model from the proposals, provided as a result of a continuous refusal of the mandatory conditions required at the beginning by the Germany.

However, many European companies have been formed as shelf companies without employee involvement even when they have started an activity later on. This reality is considered by some authors as not fully complying with certain objectives pursued by the European company's Statute and, consequently questioning the very existence of those companies.

The management structure went from an imposed two-tier system to a more flexible one in which the founders may choose between that and the one-tier system⁴¹. At the same time, in order to adapt the choice within the member states where only one system is allowed for the public limited companies a compromise was necessary. Thus, the European company regulation authorizes the member states to "adopt the appropriate measures in relation to European company"⁴²

The evolution of the European company structure was clearly affected by the national legal regimes of corporate activity and the clash between them.

⁴⁰ Article 1(2) Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

⁴¹ Article 38 (b) Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

⁴² Article 43.4 and 39-5 Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

Especially the German and the British approaches made of the final form of the European company one suited for the present European business environment, in which this corporate vehicle still struggles to show its best.

3. What happens after Brexit?

As we have noticed in the first two sections of the article, the creation and the evolution of the European company structure were influenced much more by the national legal cultures than the intended objectives of the Regulation and Directive, mainly due to some powerful and conservative views coming especially from Germany and U.K. and we think is clearly understandable why some authors started questioning on the future of corporate European law and of the European company after United Kingdom cease its EU membership.

From the beginning, the British Government didn't "perceive the European company Statute as any kind of threat to the balance of power within UK companies"⁴³, daily because they saw it "voluntarily" in most of the stringent issues. Most of the debates were on the employee involvement and the tax issues, UK remaining hostile and expressing that: "UK will not make use of the European company form until both the taxation regime is known and the issue of employee participation resolved in an acceptable manner"⁴⁴

For such a long time, the decisions on how the European company should be set up, with many disagreements coming from the minimum requirements of legal capital, from the selection of management systems (choosing between the one-tier and the two-tier systems and a the debate on the shareholders rights or the employees participation were affected by the view coming from the Island, which, in most of the cases, was a lot different than the continental one.

In all their opinions, the British Government or other public Commissions expressed undoubtedly the acceptance of the new created form only by choice and "the management would free at any time up to registration... to withdraw plans for its formation"⁴⁵.

Some may consider that losing the opposition coming from the conservative British legal system should lead to a reconsideration of matters indicated in the article as debatable and plan a restructuring of the principles on which is now build the European company, but the reasoning may not be sufficient for a fundamental reconfiguration of the our main supranational corporate vehicle.

If we analyze each one of the most debatable issues, especially the ones where the UK approach was in a total contradiction with the rest of the member states, we may get to certain conclusions that will not be conclusive. Some of the

⁴³ De Michael Gold, Andreas Nikolopoulos, Norbert Kluge, *The European Company Statute: A New Approach to Corporate Governance*, Peter Lang International Academic Publishers, Bern, 2009, p. 60-61.

⁴⁴ Conferencedartion of British Industry in its report from 2001.

⁴⁵ Select Committee report from 2001.

aspects indicated in the text of the article, as the management structure and employee participation, which started under the umbrella of a German two-tier system were changed not only due to the British opposition, but also because other member states shared the same doubts no matter if they had these aspects regulated in their national legislation or not.⁴⁶ If we take into account the labor legislation in some member states, we think that the two option system will continue to exist even after Brexit. After all, is it a fixed set of rules desirable in these matters? Due to the cultural diversity in the current European Union with so many views on corporate governance we consider that allowing more flexibility in the field of corporate law is just what the E.U. stands for!

On the other hand, the European company status has been continuously criticised as being dependent too much on national legislations, mostly because of the failures in the negotiations prior to its entering into force, "undermining the European character of the company"⁴⁷. From this perspective, we consider that some of these critics are correct and the E.U. "clash of cultures" brought, us a form of an European company which is very limited in action. We also consider that the Brexit may trigger some changes, that some important cultural and traditional barriers will be eliminated and the regulation of the European company structure will be reshape especially regarding the formation, disclosure, legal capital, transfer of seat, liability of managers or tax.

Finally, we cannot end our debate without mentioning the most important element connected to the European company structure, meaning the tax regime. Nowadays, any state is trying to find ways to stop or limit the shift of profits. But, as we have emphasized before, the European company statute has no provisions regarding the tax regime. The lack of tax provisions in the European company's Statute has caused discrimination between members states and has proven to be an obstacle to the development of the European Company within the Internal Market. Some of the reports on tax treatment of the European company⁴⁸ show important additional national tax liabilities on dividends and on the unrealized capital gains on exchange of assets and shares at the incorporation moment, a series problems which, if not solved, will restrict the use of this company structure by future interested shareholders.

Brexit may offer the chance to reshape some of debated issues which now affect the development of the European companies, and, at the some time, may lead to the creation of huge gap between the German legal system (which embraces the two-tier management system, employee co-determination and unified tax regime) and other states which may have a more liberal ideas on the development of the European company.

⁴⁶ Except UK, other countries which have just one tier system being: Spain, Sweden, Holland, Greece and Cyprus.

⁴⁷ Karol Linmondin, *The European Company (Societas Europaea) - A Successful Harmonisation of Corporate Governance in the European Union?* The Bond Review, Vol. 15, Comparative Corporate Governance, 2003, p. 174.

⁴⁸ European Federation of Accountants (FEE) Position Paper on tax Treatment of European Company, p. 12.

As the moment is closing on us, we should decide what we would like from the most important corporate vehicle of the European market and start position in relation with the others.

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